

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14**

**Wolf Creek Nuclear Operating Corporation**

**Employer**

**and**

**Case 14-RC-168543**

**International Brotherhood of Electrical Workers,  
Local 225**

**Petitioner**

**SUPPLEMENTAL DECISION**

On January 28, 2016, International Brotherhood of Electrical Workers, Local 225 (Petitioner), filed a petition with the National Labor Relations Board (Board) under Section 9(c) of the National Labor Relations Act (Act) seeking to represent the following unit of employees employed by Wolf Creek Nuclear Operating Corporation (Employer):

All full-time and part time Buyers I, II, III and Lead Buyer employed by the Employer at its facility near Burlington, Kansas to be included in a separate unit, EXCLUDING all office clerical employees, all other professional employees, all managerial employees, all guards and supervisors as defined by the Act, and all other employees.

By Decision dated February 16, 2016, the then Regional Director directed an election among the four buyers in the appropriate unit, finding that the evidence failed to establish that the petitioned-for buyers were managerial employees. An election was conducted on February 24, 2016, and a majority of the valid votes were cast for the Petitioner.<sup>1</sup> On March 1, 2016, the Employer filed a Request for Review with the Board.

On April 7, 2017, the Board issued a Decision on Review, reported at 365 NLRB No. 55, granting the Employer's request with regard to its argument that the doctrine of *res judicata*

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<sup>1</sup> The Regional Director issued a Certification of Representative on March 8, 2016.

barred processing the petition in this case because on May 4, 2000, the Acting Regional Director in then Region 17 found that the same classification of buyers were managerial employees in Case 17-UC-210. Consequently, the Board remanded the case for consideration of whether the Petitioner had demonstrated that there have been sufficient material changes with respect to the buyer classification to allow reconsideration of their managerial status. Thereafter, pursuant to my Order dated April 18, 2017, the record in this proceeding was reopened before a Hearing Officer on April 25, 2017, to afford the parties the opportunity to supplement the record on the issue of the managerial status of the Employer's buyers, specifically whether circumstances in the buyers' jobs had materially changed since the 2000 unit clarification decision.

After carefully reviewing the original and reopened records and considering the parties' briefs and arguments, I find that the evidence demonstrates that material changes warrant declining to give the decision in Case 17-UC-210 preclusive effect. Consistent with the then Regional Director's 2016 Decision and Direction of Election, I also find that the evidence no longer supports the conclusion that the petitioned-for buyers are managerial employees.

#### **THE EMPLOYER'S REQUISITION AND PROCUREMENT PROCESS**

The Employer employs four Buyers in the petitioned-for unit. Facts concerning the Employer's operations and the buyers' training and general responsibilities are accurately described in the 2016 Decision and Direction of Election and are not repeated herein.

In general terms, buyers are primarily responsible for completing requests for quotes (RFQ) and purchase orders for most of the goods and services purchased and utilized by the Employer. Although buyers play an important role in the Employer's requisition and

procurement process, they are neither the only employees involved in the process, nor are they responsible for every aspect of the process.

The Employer has developed and maintains a Requisition and Procurement Process or Administrative Control Procedure (ACP), which embodies many of the guidelines that govern the Employer's procurement of materials. The ACP applies not only to buyers, but also to all other employees involved in the requisition and procurement process. The ACP has been revised periodically throughout the years, and has been further supplemented by other instructional guidelines that address procedures to be followed when requisitioning or purchasing specific types of materials and services.

The procurement process begins with a requisition that is completed by an authorized requisition initiator (ARI). A typical requisition includes the desired number of items, a commodity code that specifically identifies the desired materials or services, and whether the requisitioned items are safety related. For previously purchased items, the commodity code also includes the previous purchase price of the item. The requisition may also include notes that contain more detailed information about a particular supplier or material.

Once initiated, a requisition is routed electronically through the appropriate approval process before it moves to the purchasing and supply chain department where it then is assigned to a buyer to complete an RFQ and/or purchase order. The buyers are primarily responsible for ensuring that the pertinent requisition information is entered into the Employer's procurement software program and that appropriate authorizations have been received before transmitting a purchase order or RFQ to a supplier. Buyers do not have authority to purchase materials without

prior authorization, and a buyers' spending authorization is tied directly to the authorization level of the manager approving the requisition.

About November 1998, the Employer began using a procurement software program called EMPAC to automate its procurement process. Although the record reflects that by 1998 the Employer already utilized a computer program, MAPPER, to generate requisitions, EMPAC's enhanced technology capabilities allowed the Employer to transition its requisition process from paper to electronic format. The evidence indicates, however, that at its implementation in late 1998, the EMPAC system did not have the functionality that it does presently, and that for a period of time buyers continued to use MAPPER in the performance of their duties.

Because of the limited functionality at its inception in 1998, the EMPAC system has been repeatedly and significantly modified to add new capabilities and functions, including major changes in 2002, 2008, and 2010. Although specific dates when revisions to the system occurred are not readily available, the record establishes that between 2000 and 2008, EMPAC evolved basically to its current format – Revision 8.6, which allows buyers and other employees involved in the requisition process to perform their jobs more quickly, with greater accuracy, but also under more scrutiny and tighter system control. EMPAC is programed to automatically route requisitions through the appropriate approval chain, track any changes to requisitions, and to interface with Curator, an electronic database that includes information concerning suppliers, materials and pricing. Additionally, each new action in EMPAC is documented through an audit trail, which not only reflects the date of an action, but also memorializes the department and employee responsible for the action. EMPAC allows a buyer to electronically append necessary

documents to a requisition request, automatically insert relevant clauses into RFQs, and save the requisition documents in Curator. Further, buyers now use EMPAC to search for approved vendors and research previously-purchased materials rather than relying on personal or institutional memory to determine when, where, and how to obtain materials and services.

The record establishes that technological changes have also enhanced the Employer's ability to monitor and control the requisition process. EMPAC is programmed to conform to the Employer's procurement policies and incorporate them into the procurement process to ensure that buyers prevent and/or catch mistakes. As the EMPAC system has evolved since 2000, the Employer has programmed checks and balances into its system to ensure that employees comply with relevant procurement policies. When a buyer completes an RFQ or purchase order, the system flags certain fields as the buyer enters information, alerting the buyer to potential policy violations. Now, for example, as a buyer completes an RFQ or purchase order to procure materials, the EMPAC program will alert the buyer when he or she is required to obtain documented authorization before submitting the document to a supplier.

## **ANALYSIS AND CONCLUSIONS**

### **1. Changed Circumstances Warrant Reconsideration of the Buyers' Managerial Status**

As noted above, in remanding this case, the Board instructed me to consider whether changed circumstances since the issuance of the decision in Case 17-UC-210 justify relitigating the buyers' managerial status. See *Wolf Creek Nuclear Operating Corporation*, 365 NLRB No. 55, slip op. at 3 (April 7, 2017). As the party asserting that the prior decision should not preclude reconsideration of the buyers' managerial status, the Petitioner bears the burden of demonstrating that material changes have occurred since 2000. See *Harvey's Resort Hotel*, 271 NLRB 306, 307

(1984) (holding collateral estoppel precluded reconsideration of supervisory status of foremen absent evidence of changed circumstances).

The Petitioner argues that technological and policy changes have materially altered the buyers' responsibilities to the extent that they are no longer managerial employees. Namely, the Petitioner contends that, since 2000, buyers less frequently solicit competitive bids, no longer independently perform bid analyses, and now rely on checks and balances built into EMPAC to ensure that procurement documents are accurate and have the appropriate authorizations. Conversely, the Employer contends that the Petitioner has failed to establish any material changes involving the buyers' responsibilities and duties, as buyers continue to procure goods and services, report to the same supervisor, and are subject to the same procedures and policies that governed their duties in 2000. The Employer argues that the Petitioner insincerely portrays technological changes occasioned by EMPAC as having materially altered the buyers' responsibilities even though the Employer implemented EMPAC before 2000, and despite evidence that EMPAC has not altered the character of the buyers' job duties or their primary function.

Contrary to the Employer's arguments, I find that the changes to the EMPAC system, largely a result of technical innovation, have fundamentally limited the buyers' discretion. As the Employer correctly argues, standing alone, technological changes are insufficient to establish material changes to a job classification. See, e.g. *The Sun*, 329 NLRB 854, 861 (1991); *United Technologies Corp.*, 287 NLRB 198, 204 (1987). In this case, however, as EMPAC has evolved since 2000, it has allowed the Employer to integrate its procurement procedures and its procurement software, and thus, regulate and restrict the buyers' discretionary actions.

Essentially, information that was once available only in the mind of a seasoned buyer or maintained in hardcopy form is now not only easily, but automatically accessible on a buyer's desktop, as well as to managers and other employees in the requisition and procurement process. Whereas buyers were previously required to have memorized or physically reviewed the Employer's procurement policies before completing a transaction, those policies are now built into EMPAC, with automatic pop-up warnings reminding buyers when they need authorization for a particular procurement and assisting them in including necessary clauses in an RFQ or purchase order. In several respects, EMPAC actually performs the functions for which buyers were previously independently responsible. For instance, buyers now utilize EMPAC to analyze and calculate bids and calculate shipping terms, and they are able to immediately route procurement documents electronically to a manager or requisitioning department. As a result of the technological changes, even though buyers remain responsible for transmitting completed RFQs or purchase orders to a suppliers just as they did in 2000, their role as one of the final gatekeepers in the procurement process has been diminished.

Apart from the changes occasioned by technological improvements, the record also reflects that the Employer no longer relies on buyers to prepare competitive bids for purchases and review price quotes as frequently as it did in 2000. Although buyers continue to issue RFQs and receive bids from suppliers, the evidence shows that the Employer has increased its use of single-source suppliers, relying on negotiated alliance agreements that identify a preferred supplier. In many other instances, a buyer simply has no other alternative than to purchase materials or equipment from a single supplier because it is the only approved source. Notably,

buyers do not negotiate alliance agreements, and they do not play a role in evaluating whether materials or equipment meet the Employer's engineering specifications.

Finally, the record establishes that buyers now have less involvement in evaluating responses to RFQs and selecting which purchaser the Employer uses to fill a purchase order. In most cases, aside from routine or lost-cost purchases, buyers customarily consult with the requisitioning department, the procurement engineering department, or a manager to identify a preferred supplier, rather than independently selecting the supplier.

As a result of the changes identified above, I find that there are material differences between the buyers' current job responsibilities and those they had in 2000. Even though the buyers remain responsible for preparing and issuing purchase orders as they did in 2000, there has been a sufficient material change in the manner in which they perform those duties to warrant reconsideration of their managerial status. While the evidence of change may not be overwhelming, as cited by the Board in *Wolf Creek*, the burden of showing changed circumstances is not an onerous one. 365 NLRB No. 55, slip op. at 3, fn. 7. The evidence in the instant case is sufficient to warrant reconsideration of these employees status as managerial employees, particularly where sole reliance on the Region's 2000 decision could result in disenfranchisement of statutory employees.

## **2. Buyers Are Not Managerial Employees**

The Board defines managerial employees as "those who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policy." *General Dynamics Corp.*, 213 NLRB 851, 857 (1974). In Case 17-UC-210,



the Acting Regional Director concluded that buyers were managerial employees because they exercised independent discretion to locate vendors without pre-approved lists, selected vendors without prior approval, negotiated prices for goods and services, and committed the Employer's credit in substantial amounts. The record in this proceeding demonstrates that, in several important respects, the Employer has substantially limited the amount of independent discretion that buyers exercise. Based on the current manner and conditions in which the buyers perform their duties, I find that the ultimate conclusion reached in the decision in Case 17-UC-210 is no longer appropriate.

As described above, I find that the buyers' authority has been circumscribed by the Employer's evolving practices and requisition and procurement policies, which have been integrated into the EMPAC software to an extent that eliminates much of the buyers' independent discretion. Buyers now only infrequently locate and select vendors without first consulting a manager or members of the department responsible for a requisition. And, although in some circumstances buyers continue to make vendor decisions on routine and cheap purchases, they do so guided by the Employer's detailed procedures and nearly always select either the lowest bidder or the supplier who can provide the materials within the requisitioning department's timeline. Buyers no longer perform technical bid evaluations, add new suppliers without authorization, independently decide which suppliers to utilize for engineered or safety-related materials, or negotiate prices for goods and services. Moreover, buyers are now more frequently limited to obtaining materials from a single source, either because they are constrained by the Employer's association agreements, or because the choice of supplier is dictated the Employer's engineering requirements.

Now, in nearly all aspects, the buyers' responsibilities appear to mirror the responsibilities of the non-managerial buyers in *Lockheed-California Company*, 217 NLRB 573 (1975). In concluding that the *Lockheed-California* buyers were not managerial employees, the Board noted that the buyers' authority, which, among other things, included committing credit and coordinating relationships with suppliers, was limited by established policies and subject to review by higher authority to such an extent there was no basis for finding that they formulated, effectuated, or made operative decisions of their employer. See *id.* at 575. Here, too, buyers have little if any independent purchasing authority, and they often rely on others within the Employer's organization to determine which supplier to use. See *Washington Post Co.*, 254 NLRB 168, 189 (1981). Although buyers still act as the Employer's agent to commit the Employer's funds by issuing purchase orders, they neither make the ultimate decision to acquire materials or approve the acquisition of materials. Rather, in nearly all aspects of their job, buyers "act[ ] within prescribed limits under policies determined by company officials and only with clearance or approval by superior authority." *Iowa Southern Utilities Co.*, 207 NLRB 341, 345 (1973). Thus, I attribute little significance to the fact that the Employer's competitive bidding process has resulted in substantial savings for the Employer. See *Case Corp.*, 304 NLRB 939, 949 (1991); *Connecticut Humane Society*, 358 NLRB 187, 210 (2012).

On the record as a whole, I find that the evidence no longer establishes that the buyers are managerial employees. Buyers operate within the confines of detailed policies, and they do not exercise the type of discretion indicative of managerial status. Accordingly, I find that Buyers are entitled to the protection of the Act.

### **CONCLUSIONS AND FINDINGS**

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Buyers I, II, III and Lead Buyer employed by the Employer at its facility near Burlington, Kansas, EXCLUDING all office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act, and all other employees.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it

did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: May 9, 2017

*/s/ Leonard J. Perez*

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